



BOARD FOR GEOLOGISTS AND GEOPHYSICISTS
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**MINUTES OF THE MEETING OF THE
BOARD FOR GEOLOGISTS AND GEOPHYSICISTS
May 19, 2006
2535 Capitol Oaks Drive
Sacramento, CA 95833-2926**

1. Call meeting to order

Craig Copelan, President, called the meeting to order at approximately 10:00 a.m.

2. Roll call to establish quorum

Craig A. Copelan, President
William E. Black, Vice President
Jeffrey Schmidt
Cecilia Yu
Richard G. Blake

Others in Attendance

Paul Sweeney, Executive Officer
Christine Doering, Staff Services Analyst
George Dunfield, Enforcement Manager
Mike Luksic, Enforcement Geologist
Corrine Gray, Enforcement Analyst
Gary Duke, Senior Legal Counsel, Department of Consumer Affairs (DCA)
Tony Sawyer, Technical Advisory Committee, Chair
Charles Nestle, Association of Environmental and Engineering Geologists (AEG) So. California
Dave Parson, Regional Water Quality Control Board
Rick Rempel, Rempel Consulting Inc.
Terry Schmidtbauer, Solano County

Mr. Copelan welcomed Mr. Blake, the Board's new Petroleum Geologist appointee. Mr. Blake provided information regarding his professional background in petroleum and environmental science.

3. Public comment on non-agenda items

Mr. Rempel provided two comments; the first related to his previous public records request for information and documents on the standing committee's of the Board and any delegated authority from the Board to the Board's Executive Officer. Mr. Rempel stated he had received a copy of the Board Member Guidelines and Procedures, but that no other information was provided. Mr. Rempel indicated that Mr. Sweeney had therefore obfuscated his public records request made in accordance with the Executive Order No. S-03-06 during a taped public meeting and that given

The Mission of the Board for Geologists and Geophysicists is to Continuously Enhance the Quality, Significance, and Availability of Geological and Geophysical Services Offered to the People of California

Mr. Sweeney's difficulty in objectively in portraying reality, Mr. Sweeney's ignorance regarding any delegated authority was feigned. Mr. Rempel provided a second comment regarding a second item not on the Board meeting agenda relating to the March 24, 2006 Board meeting in which the Board represented to the public that a two Board member ad-hoc committee consisting of Board President Copelan and Vice President Black would "work closely" with Mr. Sweeney on "performance issues". Mr. Rempel identified the hostile work environment, destruction of interagency relations with the Board of Forestry, and the Department of Toxic Substances Control (DTSC) and internally, the inability to work with the Deputy Director of Board Relations of the past administration, failure to keep accurate Board records, fabrication and misrepresentation of information in Board minutes, maligning licensed professionals in person and to third parties all presented to the Board and in the Public record; all of which were to be addressed by the Board's ad-hoc committee. Mr. Rempel noted that no report from the committee was presented in the May 19, 2006 Packet and requested a report from the ad-hoc committee to document how these issues were addressed. Mr. Duke reassured the public that that the Board meeting minutes would be more representative in the future.

Two representatives from the Governors Appointments Office advised that they are making it their priority to review the meeting to ascertain the needs of the Board so that they can better identify individuals for appointment to the Board from the governor's office.

4. Approval of the minutes of the February 17, 2006 Board and March 24, 2006 Board meetings

Ms. Yu commented that the February 17, 2006 minutes should reflect that she had volunteered to serve as a member of the TAC. Mr. Schmidt moved to approve the minutes of the February 17, 2006 and March 24, 2006 minutes as amended. Ms. Yu seconded the motion. Mr. Duke noted a general concern relating to all meeting minutes and noted that the Board has varied widely in its level of detail provided to the public; to little at times and to much at times and noted that while from a legal perspective minimal elaboration is better, the Board would probably want to include more detail to acknowledge particularly when public comments are made. Mr. Copelan stated that a small committee would be formed consisting of Ms. Yu and Mr. Schmidt in regard to these issues and that the committee would report back at the next Board meeting. The motion passed with a 4-0 vote.

5. Amend and adopt section 3062, 3062.1, 3063 and 3063.1, Title 16, Division 29, California Code of Regulations, concerning Cite and Fine authority

Mr. Duke provided background information on cite and fine regulations and stepped up to lead the Board through the process of amending and adopting the regulations. He stated that the revised language had come before the Board previously; however, the reference to "unlicensed" persons had not been included due to a typographical error. Mr. Duke further stated that the revised language added the reference to these sections. Mr. Duke further clarified that these regulations would increase the maximum fine amount from \$2,500 to \$5,000. Mr. Rempel commented that based on 15 years of state service, much of it including Administrative Civil Liability actions (the equivalent of the Board's citation and fine program), the need for a legally defensible method of determining appropriate fine amounts exists at the Board. Mr. Copelan directed Mr. Sweeney to speak to Mr. Duke and discuss fine setting methodology and report back to the Board. Ms. Yu asked if the Enforcement Oversight Committee (EOC) should be involved. Mr. Black stated that the EOC would discuss at their next meeting. Mr. Black moved to adopt the revised cite and fine language. Mr. Blake seconded the motion. The motion passed with a 4-0 vote.

6. Review of the Department of Consumer Affairs' and the Board's policy on the length of time (residence time) that Board Minutes, Agendas and Publications need to be maintained on the Board's website

Mr. Duke discussed residence time of records on the internet. He presented a letter from an attorney in regard to a prior case which involved legal suit about the length of time citation information had appeared on the internet. Mr. Duke recommended that the Board take an inventory of internet content and determine appropriate retention schedules. Mr. Copelan asked Mr. Blake and Mr. Schmidt to serve on a small committee to develop such policies to be included in the next update of the Board Member Guidelines and Procedures and also to look at updating the Strategic Plan.

7. Review of Governor Schwarzenegger's Executive Order S-03-06 and the Board's compliance with the Executive Order

Mr. Duke stated that Governor Schwarzenegger's Executive Order S-03-06 requires all departments to reassess their public records policies, be extremely responsive to public records requests and accountable to the public that public agencies serve. He reported that the Department of Consumer Affairs reviewed existing policies, refined them and issued a new Department policy on April 24, 2006. Mr. Duke stated that there have been inconsistencies within various boards/bureaus. Additionally, Mr. Duke pointed out that the Board can only charge for the direct costs of duplication of records when a public records request has been made (e.g., 10 cents a page), although, the Board has traditionally not charged individuals for public records request reproduction costs.

8. Review of procedures for approving applicants for licensure via the section 7847 process

Mr. Duke stated that the Board had received correspondence from Mr. Nestle in regard to what constitutes "an equivalent certificate of registration" as identified in section 7847. Mr. Duke identified the restriction of the practice of geology a determining factor. Mr. Duke stated that section 7847 states "without written examination", so if applicants are able to demonstrate the required qualifications, in order to require the California Specific Exam, the Board would have to create a regulation. Otherwise the Board must look at each application on a case by case basis. Mr. Duke stated that if an applicant is licensed in another state, it is incumbent upon the Board to evaluate the equivalence of experience. Mr. Rempel recommended review of applicants by the TAC, Exam Committee and Board Senior and/or staff geologists. Mr. Sawyer noted an example on an individual who had worked in the San Diego area and applied for a "grandfathered" license in the State of Washington who then applied for, and was granted, a section 7847 license.

Mr. Black recognized the difficulty in balancing the public safety vs. restriction of practice issues in evaluating 7847 applications for licensure and moved to assign the task of review and recommendation of 7847 applicants to a committee. Mr. Blake seconded the motion. Mr. Duke stated that the bigger issue is the "without examination" statement in the statute and that change would require legislation. Mr. Duke also pointed out that the Board had historically recognized the unique character of California geology and has always tried to test for California-specific criteria in its examination process.

Mr. Rempel suggested that a process be developed by Board staff and provided to the Board,

rather than simply a stack of resumes provided seven days before the Board meeting. The Board has the Technical Advisory Committee, Examination Committee and licensed professional staff that have the opportunity to complete staff reports and make qualified, technically-sound recommendations to help identify the specific policy issues for the Board. Mr. Sweeney discouraged providing the 7847 applications to a committee because the Board administrative application staff allows “eleventh hour” application submittals to the Board. Mr. Duke queried Mr. Sweeney about the existence of a recommendation, for or against, application approval; Mr. Sweeney responded that the Board staff does not provide 7847 recommendations. Mr. Sweeney later stated that Board staff did have a recommendation although it was not in the Board packet. Mr. Sweeney directed the Board to review more closely agenda item 9(j) Romea Jonas, a Registered Environmental Assessor (REA). Mr. Duke indicated that a higher level of 7847 applicant privacy protection would be afforded by referral to a Board committee or professional staff and would also provide an informed expert review of the applications.

Mr. Black stated that he wish to be provided with a summary sheet with education background, what other professional licenses are held, references, and actual work experience, etc. Mr. Sweeney directed maintaining the current review process for the time being due to the fact that the Board has two licensed geologists on staff and Ms. Pam Hopper coordinating all of the 7847 application information already. Mr. Copelan directed Mr. Sweeney to provide the 7847 application information to the Examination Committee and report back at the next Board meeting regarding the recommendations for approval or denial of section 7847 applications. Mr. Black stated that he would like to see the Board pursue a change in statute.

9. Consideration of Approval of Comity Applications for licensure via Section 7847 of the Geologists and Geophysicists Act

Mr. Sweeney stated that after a thorough technical review he recommended all 7847 applications except 9(j), Romea Jonas, be approved by the Board. Mr. Copelan asked Mr. Dunfield why this item should be removed. Mr. Dunfield stated that, in response to concerns raised by the public and the Technical Advisory Committee at previous Board and TAC meetings, he was asked to review the 7847 application packages the day of the Board meeting as a stop-gap measure by Mr. Sweeney. Based upon his cursory review of the depth and breath of experience, Mr. Dunfield could not recommend approval of three individuals; Romena Jonas, David Willis Lay, and Dennis DeLeon, who appeared to be clearly not qualified to be granted a license under section 78747, in his opinion. Mr. Rempel asked how much Mr. Dunfield has had the opportunity to review the existing 7847 documents, Mr. Dunfield stated that he had the opportunity to review the items in the packet that morning, emphasizing its stop-gap scope to identify those individuals who might not clearly demonstrate adequate experience and educational requirements due to the fact that no technical review had been previously conducted by Board application administrative staff and section 7847 applications were now being actively questioned by the profession. Applicants Romena Jonas, David Willis Lay, and Dennis DeLeon were taken off the consideration list in response to Board staff technical review in regard to depth and breadth of experience. Mr. Copelan asked Mr. Sweeney to develop procedures for technical staff review and provide recommendations at the next meeting. In the interim, Mr. Copelan stated that the Board members will receive applicant information as it comes in to the Board. Mr. Schmidt moved to approve the remaining applicants under consideration. Mr. Black seconded the motion. The motion passed with a 3-0 vote with 1 abstention. Mr. Nestle thanked the Board for beginning to consider the need for Board technical staff review of applications. Mr. Copelan directed Mr. Sweeney to review Romena Jonas, David Willis Lay and Dennis DeLeon and provide technical review recommendations for inclusion in the next Board meeting packet.

10. Technical Advisory Committee Report

Mr. Sawyer reported that the TAC met on May 5, 2006 and that all the licensure fact sheets had been completed with the exception of the geomorphology document. The documents were presented as part of the Board packet for the meeting. He stated that recommended changes to section 3065 incorporated some of the Board for Professional Engineers and Land Surveyors (BPELS) language, included government employees, and with regard to confidentiality issues offers additional protection for individuals to report hazardous situations.

Mr. Copelan directed Mr. Sweeney to initiate the regulatory process. In regard to continuing education, Mr. Sawyer stated that the TAC was in favor of the requirement, however, they need to look at what other agencies are doing in California and other geological entities. The Board asked the TAC to develop an outline for a continuing education program. Mr. Duke stated that it is important to consider procedural components (i.e. waivers, special circumstances, etc.) in addition to costs.

Mr. Sawyer presented a draft response to the Solano County inquiry regarding septic system design which indicated that the septic system design could be done by a geologist. Mr. Schmidtbauer, representative of Solano County, commented that the systems in question were not simple systems. He further stated that by state law Civil Engineers and Registered Environmental Health Specialists (REHS) can perform septic system design, and that it is vague as to what geologists can do. After some discussion, Mr. Schmidtbauer stated that additional information would be provided to expand Solano County's inquiry beyond septic systems.

Mr. Sawyer stated that the Forestry TAC work was essentially complete. He presented David Bloom, Charles Nestle and Tom Sheahan as the committee's recommendations for new TAC members. Mr. Sawyer further reported that Joe Mello had been elected interim Vice-Chair of the TAC, but that the TAC had decided to wait under their next meeting to elect a Chair and Vice-Chair for the 2006-07 term.

11. Selection of Committee Members for all Board Committees

The Board selected the following committee members for new terms:

Enforcement Oversight Committee: Scott Magorien.
Examination Committee: Laura Cathcart-Dodge; Dr. Tom Kelty.
Legislative Committee: Jonathan Kuespert; Philip L. Ryall.
Technical Advisory Committee: David Bloom; Charles Nestle; Tom Sheahan.

Mr. Blake, and subsequently, Mr. Sweeney highly recommended Mr. James Ashby, CEG to serve on the Board's TAC committee at a later date.

12. Examination Committee Report

Mr. Sweeney presented the attendance numbers for the March 3, 2006 exams. Ms. Doering stated that exam results should be mailed out the next week. The numbers of examinees have increased, going up three years in a row, according to Mr. Sweeney's report.

13. Report from the Office of Examination Resources on the Candidate Handbook

workshops held in Sacramento on March 2-3 and 9-10, 2006

Mr. Sweeney reported that Nancy Linn, Office of Examination Resources, was unable to attend the meeting. Mr. Sweeney reported that the workshops went smoothly, with the exception of an incident where, according to Mr. Sweeney's report, an individual that was considered to be disruptive and told to leave the workshop site.

14. Legislative Report

Mr. Sweeney presented Senate Bill 1476. He reported that the Senate Appropriations Committee had passed the bill with an 8-2 vote and that it was scheduled for the Senate Floor third reading on May 22, 2006. Mr. Sweeney presented Senate Bill 1849 and advised that the language to eliminate the California Specific Exam had been amended out of the bill on April 24, 2006 and that the bill no longer contained any language pertaining to geologists. Mr. Sweeney reported that the exam is still a licensure requirement.

15. Discussion on Archeology and the Practice of Geology

Mr. Sweeney raised issues in regard to geophysics and archeology.

16. Executive Officer's report

Mr. Sweeney passed out his budget report for the month ending April 30, 2006 which represented approximately 23% of the Board's budget remaining for the current fiscal year. Mr. Rempel identified that the budget report represented Mr. Sweeney was 42% over for next fiscal year. Mr. Sweeney said he would try to correct next year's budget.

Mr. Dunfield reported on enforcement activities since the February 17, 2006 Board Meeting including 5 cases opened; 17 cases closed for insufficient evidence, withdrawn, other closure, etc. (almost all dismissed in April of 2006); and 5 cases closed. Mr. Dunfield and Ms. Gray reported that Ms. Gray has worked to provide an accurate CAS-based tracking system for the Board's enforcement cases. Mr. Dunfield commended on the great CAS-project work completed by Enforcement Annalist Gray. Mr. Duke reiterated that Ms. Gray is confronted with an obsolete version of CAS, which has not been substantially updated since the early 1980's but has been working to re-structure the Board's CAS system effectively. Ms. Gray explained other intricacies of the CAS system to the Board.

Mr. Luksic reported on the case of Mr. David Saunders who was practicing professional geology with an expired license for 34 months and was issued a citation and fine of \$2,500. Mr. Luksic further explained that Mr. Saunders renewed his licensee and paid a reduced fine of \$2,000. Mr. Luksic also responded to an inquiry from a junior high school student (Mr. Chaney Takiguchi).

Mr. Dunfield reported that the Board issued a citation and fine of \$2,500 on March 1, 2006 to Mr. Glenn Reierstad, a Professional Engineer (Ch.E.) which was paid Mr. Reierstad. Mr. Reierstad wrote a complimentary letter to Mr. Dunfield thanking him for his help in explaining the scope of practice of professional geology and geophysics and in working cooperatively to resolve the concerns of the complaint. The Board issued citation and fine of \$500 on February 17, 2006 to Mr. Jon Lovegreen; the fine amount was reduced to \$250 on April 4, 2006 by Mr. Sweeney. The Board issued a citation and fine of \$2,500 on January 18, 2006 to Mr. Jeff Lee; the fine amount was reduced to \$500 on April 17, 2006 by Mr. Sweeney. Board issued a Citation and Fine of

\$2,500 on March 10, 2006 to Mr. Douglas Cook; the fine was reduced to \$2,000 on April 12, 2006 by Mr. Sweeney.

Mr. Dunfield reported that various enforcement staff had participated in outreach activities such as attending AEEG and CCGO meetings in Goleta, Sacramento and Oakland. Licensed professional industry leader attendees and several members of the California Mining and Geology Board appreciated Board staff interest in these meetings.

Mr. Dunfield reported that he was contacted by Mr. Ron Duff, PE, Manager of the State Water Resources Control Board (SWRCB) Underground Storage Tank Clean-up Fund (Fund) who included a joint Board - SWRCB document that articulated appropriate and inappropriate licenses and certifications for reimbursement by the state in the winter 2006 Fund newsletter.

Mr. Dunfield reported that on May 2, 2006, he received a summary statement of the decision from the California Supreme Court on the matter of Tony Jaramillo (Board's first precedential case). Mr. Duke stated that this case is crucial because it is the first case interpreting the scope of the practice of geology and the Geologists and Geophysicists Act.

Mr. Sweeney reported that he would be speaking at the Riverside County Geology Continuing Education Series. Ms. Doering provided information regarding website updates, the Board's upcoming newsletter and the Budget Information System (BIS) project. Mr. Sweeney presented a proposed response to a licensee requesting response directly from the Board and not the Board's Executive Officer. Mr. Copelan signed Mr. Sweeney's proposed response to the inquiry to the Board.

17. Legal report

Mr. Duke discussed the legal qualifications of Board members and prospective Board members. Mr. Duke reported that the Board had successfully defended itself against an invasion of privacy allegation by Dr. Joseph Odencrantz. Dr. Odencrantz lost at the Superior Court level and the Board was awarded cost recovery. The case was then appealed to the 4th Appellate District Court which published a decision (considered unofficial at this point). Mr. Duke stated that Dr. Odencrantz can appeal to the California Supreme Court. However, the Board has already been awarded costs of appeal.

18. Discussion of personnel matters, examination procedures and results, and pending litigation (as needed)

The open meeting was closed and the Board went into closed session at 3:12 p.m.

19. Report on results of Closed Session

The open session reconvened at 3:21 p.m. Mr. Copelan reported that the Board met in closed session and discussed personnel matters. Mr. Duke added that no discussion or action was taken on examinations or pending litigation.

20. Announcements

Mr. Copelan announced that the next Board meeting would be on August 11, 2006, the next TAC meeting on July 28, 2006, and that both would be located at the Hilton Los Angeles Airport.

21. Adjourn meeting

The Board meeting was adjourned at 3:24 p.m.

WILLIAM E. BLACK, BOARD PRESIDENT

BOARD EXECUTIVE OFFICER

Date Approved: December 8, 2006